IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

Crl.L.P..No. 542 of 2007()

ST.644/2006 ON THE FILE OF THE COURT OF THE SPECIAL JUDICIAL FIRST CLASS MAGISTRATE (MARAD CASES), KOZHIKODE

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PETITIONER/COMPLAINANT.

M/S. RICH FIELD CHITTIES (P) LTD.,
18/826, SHUKOOR BUILDING, KANADAMKULAM ROAD,
CALICUT, REPRESENTED BY MANAGING DIRECTOR, BY HIS
POWER OF ATTORNEY HOLDER E.M.VELAYUDHAN,
S/O. KUTTAN, AREA MANAGER, MOOKILTHAZHATH HOUSE,
PANTHEERANKAVU P.O., CALICUT.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: ACCUSED & STATE.

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1. AHAMMED KOYA K., S/O. MUHAMMED,
KATTAYATTUMEETHAL HOUSE, P.O.RAMANATTUKARA,
CALICUT.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P.SRI.THOMAS JOHN AMBOOKKAN FOR R2

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 13/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

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Crl.L.P. No. 542 of 2007

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Dated this the 13th day of August,2007

O R D E R

This is a petition to special leave to appeal filed by the complainant in S.T.No.644/06 on the file of the Court of the Special Judicial First Class Magistrate (Marad Cases), Kozhikode. In the complaint it is stated that the petitioner was a Private Limited Company engaged in chitty business and the 1st respondent in discharge of a liability of one Abdul Gafoor issued Ext.P3 cheque for an amount of Rs.33,150/- in favour of the petitioner and when the cheque was presented for encashment, it was dishonoured for insufficiency of funds in the account of the 1st respondent. After complying the statutory formalities, the complaint has been filed alleging that the 1st respondent had committed an offence punishable under section 138 of the Negotiable Instruments Act. To prove the case against the 1st respondent, PW1 was examined and Exts.P1 to P8 were marked. After closing the prosecution evidence, the 1st respondent was questioned under section 313 Cr.P.C.. He denied the allegations and stated that he was the subscriber of the chitty conducted by the petitioner and when he received the chitty amount two signed blank cheques were given to the petitioner and even

after repayment of the entire amount of the chitty, demanding an exorbitant amount as interest, a false case was foisted against him mis-utilizing the blank cheque. After considering the entire evidence adduced by the petitioner and the 1st respondent, the trial court found that the petitioner company miserably failed to prove that impugned cheque was supported by consideration. At the same time, the trial court found that the case set up by the 1st respondent that blank cheque which handed over to the petitioner at the time of receiving the chitty amount was mis-utilized by the petitioner to stake a false complaint was more probable. After considering the entire evidence, this Court finds that the findings entered by the trial court are on evidence and the petitioner miserably failed to prove that the cheque in question was issued in discharge of a legally enforceable debt.

2. In the above circumstances, this Court is of the view that the impugned judgment requires no interference by this Court. Hence, leave to appeal is rejected.

K. Thankappan,
Judge.

mn.